

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BENTLEY INDUSTRIES, INC., et al.,

Plaintiff(s),

vs.

LONGEVITY NETWORK, LLC, et al.,

Defendant(s).

Case No. 2:12-cv-01067-JAD-NJK

ORDER DENYING MOTION TO  
STAY DISCOVERY

(Docket No. 80)

Pending before the Court is Defendants' motion to stay discovery pending resolution of their motion for summary judgment. Docket No. 80. Plaintiff filed a response in opposition, and Defendants filed a reply. Docket Nos. 89, 91. The Court finds the motion to stay discovery properly decided without oral argument. *See* Local Rule 78-2. For the reasons discussed more fully below, the motion to stay discovery is hereby **DENIED**.

"The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay carries the heavy burden of making a strong showing why discovery should be denied. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). The case law in this District makes clear that requests to stay all discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a "preliminary peek"

1 at the merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to  
 2 state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).

3 The Court finds that a stay of discovery is not appropriate in this case.<sup>1</sup> Most significantly, the  
 4 Court has taken a preliminary peek at the motion for summary judgment and is not convinced that it will  
 5 be granted.<sup>2</sup> It bears repeating that the filing of a non-frivolous dispositive motion, standing alone, is  
 6 simply not enough to warrant staying discovery. *See, e.g., Tradebay*, 278 F.R.D. at 603. Instead, the  
 7 Court must be “convinced” that the dispositive motion will be granted. *See, e.g., id.* “That standard is  
 8 not easily met.” *Kor Media*, 294 F.R.D. at 583. “[T]here must be *no question* in the court’s mind that  
 9 the dispositive motion will prevail, and therefore, discovery is a waste of effort.” *Id.* (quoting *Trazska*  
 10 *v. Int’l Game Tech.*, 2011 WL 1233298, \*3 (D. Nev. Mar. 29, 2011)) (emphasis in original). The Court  
 11 requires this robust showing that the dispositive motion will succeed because applying a lower standard  
 12 would likely result in unnecessary delay in many cases. *Id.* (quoting *Trazska*, 2011 WL 1233298, at \*4).  
 13 That concern is heightened in a case like this one that has already been pending for nearly two years and  
 14 discovery has not been completed. *Cf.* Local Rules 26-1(d) and 26-1(e)(1) (providing presumption that  
 15 a reasonable discovery period is 180 days calculated from the first defendant answering or otherwise  
 16 appearing in the case).

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 20 <sup>1</sup> The pending motion seeks a stay of all discovery. *See, e.g.*, Docket No. 80 at 2, 8. But Defendants  
 21 acknowledge in their reply that the motion for summary judgment is not potentially case-dispositive. *See*  
 22 Docket No. 91 at 8. Defendants blame a typographical error for their earlier assertion that the “motion for  
 23 summary judgment will resolve the entire case as it seeks judgment on all of the claims that have been  
 24 asserted.” *See* Docket No. 80 at 8; Docket No. 91 at 8. As a result, the reply attempts to limit the scope of  
 25 the requested stay to only discovery related to the claims at issue in the motion for summary judgment. *See*  
 26 Docket No. 91 at 8. The Court generally does not consider arguments raised for the first time in reply. *See,*  
 27 *e.g., Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996) (per curiam). Even construing the motion as  
 28 seeking a limited stay of discovery, however, it fails for the reasons discussed above.

26 <sup>2</sup> Conducting this preliminary peek puts the undersigned in an awkward position because the assigned  
 27 district judge who will decide the motion to dismiss may have a different view of its merits. *See Tradebay*,  
 28 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of that motion is not intended to  
 prejudice its outcome. *See id.*

1 The Court has carefully reviewed the arguments presented in the motion for summary judgment  
2 and subsequent briefing. Docket Nos. 78, 92, 96. The Court is simply not convinced that the motion  
3 for summary judgment will be granted, such that continuing discovery will be a waste of effort.

4 Accordingly, the motion to stay discovery is hereby **DENIED**.<sup>3</sup>

5 IT IS SO ORDERED.

6 DATED: April 30, 2014

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NANCY J. KOPPE  
United States Magistrate Judge

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27 <sup>3</sup> Plaintiff seeks an order from the Court that Defendants' discovery responses were improper and,  
28 as a result, all objections have been waived. *See* Docket No. 89 at 17-18. That issue is not properly before  
the Court, so the Court expresses no opinion on it.